



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 15, 1992

Mr. Jim Grissom
Assistant City Attorney
City of Harlingen
P. O. Box 2207
Harlingen, Texas 78551

OR92-235

Dear Mr. Grissom:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13961.

The City of Harlingen has received a request for information relating to a flood that occurred in April 1991. Specifically, the requestor seeks copies of video tapes and photographs of the flood prepared by the city and a copy of the Federal Emergency Management Action Report and any other documents which relate to this particular flood. You have submitted to us for review representative samples of the requested photographs but assert that the other requested documents are too voluminous to submit *in toto* and have not been organized or indexed in a manner which would permit submission of representative samples. You claim that the requested information is excepted from required public disclosure by section 3(a)(3) of the Open Records Act.

We have considered the exceptions you claim. Previous open records decisions issued by this office resolve your request. Open Records Decision No. 555 (1990) held that a section 3(a)(3) exception is applicable only when litigation is pending or may be reasonably anticipated and if the requested information relates to that litigation. Section 3(a)(3) forces parties to a lawsuit to obtain relevant information through the normal process of discovery. Open Records Decision No. 551 (1990).

You advise us that the City of Harlingen is presently party to two lawsuits

arising from the flood of April 1991. You have submitted to us the corresponding petitions, which indicate that the city is defending itself against allegations of negligence during the flood. You have determined that the requested information relates to the litigation. Therefore, unless previously disclosed through the discovery process, by court order, or by other means, the requested information may be withheld from required public disclosure by section 3(a)(3). See Open Records Decision No. 551 Please note that this ruling applies only for the duration of the litigation and only for the information at issue here.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-235.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Steve Aragon", with a small circular mark at the end of the signature.

Steve Aragon
Assistant Attorney General
Opinion Committee

SA/GCK/lmm

Ref.: ID# 13961